



**Minutes of the Government Records Council  
September 26, 2017 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:31 p.m. by Ms. Robin Tabakin at the Department of Community Affairs, Conference Room 129, Trenton, New Jersey.

- **Pledge of Allegiance**

All stood and recited the pledge of allegiance in salute to the American flag.

- **Meeting Notice**

Ms. Tabakin read the following Open Public Meetings Act statement:

“This meeting was called pursuant to the provisions of the Open Public Meeting Act. Notices of this meeting were faxed to the Newark Star Ledger, Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on September 21, 2017.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Tabakin, Esq. (Chairwoman) (participated telephonically), Christopher Huber, Esq. (designee of Department of Education Acting Commissioner Kimberley Harrington), Jason Martucci, Esq. (designee of Department of Community Affairs Commissioner Charles A. Richman).

Absent: Steven Ritardi, Esq. (Public Member)

GRC Staff in Attendance: Joseph Glover (Executive Director), Rosemond Bordzoe (Secretary), Frank F. Caruso (Communications Specialist/Resource Manager), John Stewart (Mediator), Samuel Rosado (Staff Attorney), and Deputy Attorney General Debra Allen.

Ms. Tabakin advised that copies of the agenda are available by the conference room door.

## II. Executive Director's Report:

### Electronic Filing of Denial of Access Complaints

- Early in Program Year 2016, the GRC launched the first phase of an online system to allow the public to file Denial of Access Complaints in an electronic, paperless format. Since implementation, the GRC has received approximately 50 online filings. The GRC is working to address certain browser compatibility issues.

### Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 4,711 Denial of Access Complaints. That averages about 309 annual complaints per approximately 15¼ program years. For comparison, consider that the GRC received 744 Denial of Access Complaints during calendar years 2015 and 2016, which averages to 372 complaints per year during that period and reflects an increase of a bit over 20% above the historic annual average.
- 491 of the 4,711 complaints remain open and active. Of those open cases,
  - 26 complaints are on appeal with the Appellate Division (5.3%);
  - 20 complaints are currently in mediation (4.1%);
  - 37 complaints await adjudication by the Office of Administrative Law (7.5%);
  - 61 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (12%); and,
  - 338 complaints are work in progress (69%).
- Since Program Year 2004, the GRC has received 27,487 total inquiries. That is an average of about 1,929 annual inquiries per approximately 14¼ tracked program years (the GRC did not track inquiries in the first year). So far in the current program year, the GRC has received 392 inquiries.

## III. Closed Session

- Susan Fleming v. Greenwich Township (Warren) (2015-18) (**SR Recusal**)
- Michael I. Inzelbuch, Esq. v. NJ Office of Administrative Law (2015-78)
- Glenn Jones v. Rutgers, The State University of New Jersey (2015-202)
- Aakash Dalal v. NJ Department of Law and Public Safety, Division of Criminal Justice (2015-280)

Ms. Tabakin called for a motion to go into closed session. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The Council adopted the motion by a unanimous vote.

The Council met in closed session from 1:36 p.m. until 1:51 p.m.

Ms. Tabakin called for a motion to end the closed session. Mr. Martucci made a motion, which was seconded by Mr. Huber. The Council adopted the motion by a unanimous vote. Open Session reconvened at 1:53 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Tabakin, Mr. Huber, Mr. Martucci; Mr. Ritardi was absent

#### **IV. Approval of Minutes of Previous Meetings:**

- **August 29, 2017 Open Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the draft open session minutes of the August 29, 2017 meeting. Mr. Huber noted that he confirmed the accuracy of the draft minutes with Ms. Simons. Mr. Martucci made a motion, which was seconded by Mr. Huber. The motion passed by a unanimous vote.

#### **V. New Business – Cases Scheduled for Adjudication**

Ms. Tabakin stated that an “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Executive Director’s recommendation of dismissal based on jurisdictional, procedural, or other defects of the complaint. The reason for the Administrative Disposition is under each complaint below:

##### **A. Administrative Disposition Adjudications with Recusals (Consent Agenda): None**

##### **B. Administrative Disposition Adjudications with no Recusals (Consent Agenda):**

###### **1. James A. McCall v. East Orange Police Department (Essex) (2016-125)**

- The request was not a valid OPRA request.

Ms. Tabakin called for a motion to accept the recommendations as written in the above Administrative Complaint Disposition. Mr. Huber made a motion, which was seconded by Mr. Martucci. The motion passed by a unanimous vote.

##### **C. Administrative Disposition of Uncontested, Voluntary Withdrawals by Complainant (No Adjudication of the Council is Required):**

###### **1. Scott Madlinger v. NJ Division of Gaming Enforcement (2016-239)**

- The Complainant voluntarily withdrew the complaint.
- This complaint was originally scheduled for an individual adjudication but was withdrawn just prior to the meeting.

###### **2. Scott Madlinger v. NJ State Police (2016-240)**

- The Complainant voluntarily withdrew the complaint.
- This complaint was originally scheduled for an individual adjudication but was withdrawn just prior to the meeting.

3. **Gregory Drummond v. Summit Public Schools (Union) (2016-181)**
  - The Complainant voluntarily withdrew the complaint.
4. **David Weiner v. County of Essex (2017-142)**
  - The parties settled the matter through mediation.
5. **Robert John Tokarczyk v. Township of Montgomery (Somerset) (2017-161)**
  - The Complainant voluntarily withdrew the complaint.
6. **Robert Tokarczyk v. Camden County Municipal Utilities Authority (2017-168)**
  - The Complainant voluntarily withdrew the complaint.

## VI. New Business – Cases Scheduled for Individual Complaint Adjudication

### A. Individual Complaint Adjudications with Recusals:

1. **Susan Fleming v. Greenwich Township (Warren) (2015-18) (SR Recusal)**
  - The Custodian complied with the Interim Order.
  - The Custodian must comply with the findings of the *in camera* examination and must disclose records as set forth in the table.
  - The knowing and willful analysis is deferred, pending the Custodian's compliance.
  - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Rosado stated that 6 amendments consistent with the Council's *in camera* review comments were made. Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi, recused, was absent.
2. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-134) (SR Recusal)**
  - The Custodian has not fully complied with the Interim Order because he did not provide all responsive records to the Complainant.
  - The Custodian must disclose those records provided in response to third party OPRA requests unless he certifies: 1) that no records existed relative to a particular third party OPRA request, or 2) that he did not provide records because he denied access to the third party requestor.
  - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
  - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi, recused, was absent.
3. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-147) (SR Recusal)**
  - The Custodian complied with the Interim Order.
  - There is no knowing and willful violation.

- The Complainant is not a prevailing party and is not entitled to an award of reasonable attorney's fees.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi, recused, was absent.

A brief summary of the Executive Director's recommended action is under each complaint:

**B. Individual Complaint Adjudications with no Recusals:**

1. **Shawn G. Hopkins v. Township of Aberdeen (Monmouth) (2014-04)**

- The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

2. **Shawn G. Hopkins v. Borough of Allentown (Monmouth) (2014-05)**

- The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

3. **Shawn G. Hopkins v. Borough of Atlantic Highlands (Monmouth) (2014-06)**

- The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

4. **Shawn G. Hopkins v. Borough of Allenhurst (Monmouth) (2014-12)**

- The current Custodian complied with the Interim Order.
- There is no knowing and willful violation.

- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

5. **Shawn G. Hopkins v. Borough of Fair Haven (Monmouth) (2014-24)**

- The Custodian did not fully comply with the Interim Order because she failed to seek an extension of time to obtain and disclose records, which resulted in her not timely submitting certified confirmation of compliance.
- There is no knowing and willful violation.
- The Complainant is a prevailing party and is entitled to an award of reasonable attorney’s fees.
- The parties shall confer in an effort to decide the amount of reasonable attorney’s fees and shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on a fee amount, Complainant’s Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

6. **Shawn G. Hopkins v. Borough of Freehold (Monmouth) (2014-26)**

- The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

7. **Robert J. Chester v. Pleasantville Housing Authority (Atlantic) (2015-50)**

- The Custodian failed to comply fully with the Interim Order because the response brought into question the electronic availability of records, copy cost issues, and the existence of records that he certified did not exist.
- Based on the contested facts, the complaint should be referred to the Office of Administrative Law for a fact-finding hearing.
- The knowing and willful and prevailing party analyses are deferred, pending the OAL’s disposition of the matter.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

8. **Luis F. Rodriguez v. Kean University (2015-77)**

- The Custodian did not bear the burden of proving that she timely responded to the OPRA request, based on numerous extensions of time to respond, thus resulting in a “deemed” denial.
- The Council need not order disclosure because the Custodian released all responsive records.
- There is no knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

9. **Michael I. Inzelbuch, Esq. v. NJ Office of Administrative Law (2015-78)**

- The Custodian did not fully comply with the Interim Order because he did not respond timely and did not provide a sufficient certified confirmation of compliance.
- The Custodian shall comply with the findings of the *in camera* examination.
- The Custodian must disclose all other portions of the responsive e-mails.
- The knowing and willful analysis is deferred, pending the Custodian’s compliance.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

10. **Luis F. Rodriguez v. Kean University (2015-150)**

- The Custodian failed to establish valid grounds for reconsideration based on extraordinary circumstances.
- On its own motion, the Council rescinds conclusion No. 2, which referred the matter to the Office of Administrative Law for a knowing and willful hearing, based on a mistake. Specifically, the Council should find no violation of N.J.S.A. 47:1A-5(e), and the Council should consider the clarified time frame that was not originally considered.
- There is no knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

11. **Glenn Jones v. Rutgers, The State University of New Jersey (2015-202)**

- The Custodian complied with the Interim Order.

- With certain exceptions, the Custodian lawfully denied access to the redacted portions of the record because it contained advisory, consultative, or deliberative material and attorney client privileged material.
- The Custodian shall comply with the findings of the in camera examination.
- The knowing and willful analysis is deferred, pending the Custodian's compliance.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

**12. Luis F. Rodriguez v. Kean University (2015-234)**

- The Custodian did not bear the burden of proving that she timely responded to the OPRA request, based on numerous extensions of time to respond, thus resulting in a "deemed" denial.
- The Council need not order disclosure because the Custodian released all responsive records.
- There is no knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Rosado stated that changes were made to indicate the Council's strong position on extensions of time. Ms. Tabakin added that she believed the Custodian's action were in excess and that the "negligent and heedless" language should be included. Mr. Rosado indicated that this language, used in past decisions, was included. Mr. Huber also suggested that a directive on how to avoid the extension violation be included. DAG Allen supported the addition of directive language. Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

**13. Aakash Dalal v. NJ Department of Law and Public Safety, Division of Criminal Justice (2015-280)**

- The Custodian complied with the Interim Order.
- The *in camera* examination reveals that the Custodian lawfully denied access to the responsive records.
- There is no knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

**14. Jesse Wolosky v. Borough of Washington (Warren) (2015-402)**

- The Custodian did not timely respond to the OPRA request, thus resulting in a "deemed" denial.

- The Custodian’s response was insufficient because she failed to provide a written response that sets forth a lawful basis for each redaction.
- The Custodian unlawfully denied access to responsive vendor reports. However, the GRC need not order disclosure because the Chief Financial Officer subsequently provided response records.
- The Custodian lawfully denied access to her personal continuing education certificates because they do not fall within OPRA’s definition of a “government record.”
- There is no knowing and willful violation.
- The Complainant is partially a prevailing party and is entitled to an award of reasonable attorney’s fees.
- The parties shall confer in an effort to decide the amount of reasonable attorney’s fees and shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on a fee amount, Complainant’s Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

15. **Jesse Wolosky v. Borough of Washington (Warren) (2016-19)**

- The Custodian did not timely respond to the OPRA request, thus resulting in a “deemed” denial.
- The Council need not order disclosure because the Custodian disclosed all responsive records.
- There is no knowing and willful violation.
- The Complainant is not a prevailing party and not entitled to an award of reasonable attorney’s fees.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

16. **Derrick B. Parreott, Sr. v. Asbury Park School District (Monmouth) (2016-20)**

17. **Derrick B. Parreott, Sr. v. Asbury Park School District (Monmouth) (2016-39)**  
**Consolidated**

- The OPRA request was invalid in part.
- The Custodian lawfully denied access to employment applications pursuant to N.J.S.A. 47:1A-10.
- The Custodian lawfully denied access to the request for résumés because no responsive records exist.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr.

Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

18. **Scott M. Halliwell and Anthony G. Pennant v. Borough of Brooklawn (Camden) (2016-130)**

- There is no unlawful denial of access because no responsive records exist.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

19. **Jennifer Dericks (o/b/o TAPintoSparta.net) v. Sparta Township (Sussex) (2016-227)**

- The requested record is barred from disclosure under N.J.S.A. 2A:4A-60 and N.J.S.A. 47:1A-9(a).
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

20. **Judy DeHaven v. Red Bank Charter School (Monmouth) (2017-81)**

- The Custodian failed to establish valid grounds for reconsideration.
- The Council's Order requiring disclosure remains in force. However, because the Custodian disclosed several records during the pendency of the request for reconsideration, the GRC will defer the compliance analysis, pending the Custodian's complete disclosure of the responsive records or his legal certification that no responsive records exist.
- The knowing and willful analysis is deferred, pending the Custodian's compliance.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

21. **Ranjeet Singh v. Borough of Carteret (Middlesex) (2017-148)**

- The Custodian complied with the Interim Order.
- There is no knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

**VII. Court Decisions of GRC Complaints on Appeal: None**

### **VIII. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:**

- Ganzweig v. Twp. of Lakewood, 2017 N.J. Super. Unpub. LEXIS 2164 (App. Div. 2017): Here, the Appellate Division affirmed in part and remanded in part to review the disclosure of police reports and counsel fees.

The genesis of this complaint was borne out of two traffic stops that resulted in an officer being charged with official misconduct. Plaintiff sought access to the audio and video of the stop, as well as police reports associated with such. Defendants denied access under the criminal investigatory exemption, and plaintiff subsequently filed a verified complaint. The trial court held that defendants unlawfully denied access to the responsive mobile video recordings (“MVR”) based on the majority decision in Paff v. Ocean Cnty. Prosecutor's Office, 446 N.J. Super. 163 (App. Div. 2016)(*certif. granted* 2016 N.J. LEXIS 1331)(holding that an order issued by a police chief makes MVRs “required by law to be made” thus rendering the criminal investigatory exemption inapplicable). The trial court also awarded roughly \$22,000 in attorney’s fees to plaintiff.

On appeal, defendants urged the Court to side with the dissenting opinion in Paff (that the chief’s order did not have the force of law). The Court, however, agreed with the majority and held that the criminal investigatory exemption did not apply to the requested MVRs due to the local police chief’s directive.

However, the Court remanded the matter back to the trial court for a determination on whether a press release published by the Ocean County Prosecutor’s Office met the requirements of N.J.S.A. 47:1A-3(b). *See* N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 2017 N.J. LEXIS 745 (2017)(allowing a public agency to disclose N.J.S.A. 47:1A-3(b) information from other exempt records through a press release). The Court also remanded to adjust the attorney fee award based on the outcome of this issue.

### **IX. Public Comment:**

- Ms. Lois Lebbing from Highland Park addressed the Council to inquire about the status of her complaint, Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2016-251. Mr. Glover addressed Ms. Lebbing’s concerns and asked Mr. Rosado to provide a status update after the meeting.

### **X. Adjournment:**

Ms. Tabakin called for a motion to end the Council meeting. Mr. Martucci made a motion, which was seconded by Mr. Huber. The motion passed unanimously.

The meeting adjourned at 2:31 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: October 31, 2017